

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of Qwest Corporation's  
Conversion of UNEs to Non-UNEs

**FIRST PREHEARING ORDER**

In the Matter of Qwest Corporation's  
Arrangements for Commingled  
Elements

This matter came on for a prehearing conference before Administrative Law Judge Kathleen D. Sheehy at the Offices of the Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, Snelling Conference Room, St. Paul, Minnesota, on September 10, 2007.

Jason D. Topp, Qwest Corporation Law Department, 200 South Fifth Street, Room 2200, Minneapolis, MN 55402, appeared for Qwest.

Dan Lipschultz, Moss & Barnett, 4800 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402-4129, appeared for McLeodUSA Telecommunications Services, Inc.; POPP.com, Inc.; DIECA Communications, Inc., d/b/a Covad Communications Company; and XO Communications of Minnesota, Inc. (CLEC Coalition).

Dennis D. Ahlers, Eschelon Telecom, Inc., 730 Second Avenue South, Suite 900, Minneapolis, MN 55402, appeared for Eschelon.

Linda S. Jensen, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101, appeared on behalf of the Minnesota Department of Commerce (Department). Edward Fagerlund also participated in the conference.

Ganesh Krishnan appeared for the staff of the Minnesota Public Utilities Commission.

Based on the discussions during the prehearing conference, and all of the files and proceedings, the Administrative Law Judge makes the following:

**ORDER**

1. The parties to this matter are Qwest, Eschelon, the CLEC Coalition, and the Department.

2. Other persons wishing to intervene must file a written petition to intervene, pursuant to Minn. R. 1400.6200, subp. 1, by September 24, 2007. The petition shall be served upon the Administrative Law Judge, all existing parties, and the Minnesota Public Utilities Commission. Any objection to a petition to intervene shall be filed within seven days of service of the petition. Any persons petitioning to intervene after September 24, 2007, may be restricted as to the scope of their participation. Any person who is allowed to intervene after the date of this Order shall be bound by the terms of this Order.

## ISSUES

3. The issues as framed in the Notice and Order for Hearing are:

Whether the Commission has authority to set the rates, terms, and conditions for the conversion of UNEs (as defined in the 1996 Telecommunications Act, Section 251) to Non-UNEs and for Commingled Arrangements; and

Whether, and to what extent, when competing local exchange carriers (CLECs) convert from UNEs to alternative services and purchase Commingled Arrangements, the services in question become interstate services subject to the FCC's exclusive jurisdiction rather than intrastate services subject to the Commission's jurisdiction.

4. During the prehearing conference, the parties discussed whether these issues overlap as currently framed; the impact of the settlement agreement in the *Wire Center Proceeding*,<sup>1</sup> which has not yet been approved by the Commission; and whether they could stipulate to a factual scenario that would illustrate the issues to be resolved. The parties agreed to develop a factual illustration of the issues, and, if necessary, a more specific statement of the issues, by September 20, 2007.

5. The parties agree that the legal issues concerning the Commission's authority to address Qwest's OSS processes for the conversion of UNEs to Non-UNEs and the commingling of UNEs and Non-UNEs are suitable for resolution on motions for summary disposition. The Notice and Order for Hearing provides that the Administrative Law Judge will issue a Recommended Order for resolution of the legal issues; if the Commission ultimately determines that it has legal authority to address any of the rates, terms, or conditions involved in these processes, and that a contested case hearing is necessary to resolve those issues, the Commission may return this matter to OAH for a contested case hearing on those substantive issues.

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<sup>1</sup> *In the Matter of CLECs' Request for Commission Approval of ILEC Wire Center Impairment Analysis*, Docket No. P-5692/M-06-211, and *In the Matter of a Commission Investigation Identifying Wire Centers in Which Qwest Must Offer High-Capacity Loop or Transport UNEs at Cost-Based Rates*, Docket No. P-999/CI-06-685.

## SCHEDULE

6. The following schedule is adopted:

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|---|-------------------|
| •Qwest files an initial Memorandum in Support of Motion for Summary Disposition.                                    | October 4, 2007   |
| •Eschelon, the CLEC Coalition, and the Department file Memoranda in Response to the Motion for Summary Disposition. | November 1, 2007  |
| •All Parties may file Reply Memoranda   | November 15, 2007 |
| •Target Date for ALJ's Recommended Order  | December 17, 2007 |

Dated: September 12, 2007

s/Kathleen D. Sheehy

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KATHLEEN D. SHEEHY  
Administrative Law Judge